

1 BILL NO. S-97-04-09
2

3 SPECIAL ORDINANCE NO. S- 39-97
4

5 AN ORDINANCE approving Contract CONSTRUCTION OF
6 NEW FIRE STATION #10 AT 3122 NORTH ANTHONY
7 BOULEVARD between FETTERS CONSTRUCTION INC.
8 and the City of Fort Wayne, Indiana, in connection with the
9 Board of Public Works.

10 NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF
11 THE CITY OF FORT WAYNE, INDIANA:

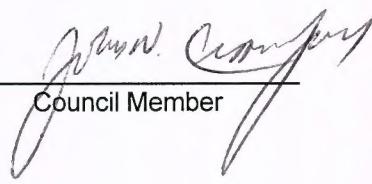
12 SECTION 1. That the Contract **CONSTRUCTION OF NEW FIRE STATION**
13 **#10 AT 3122 NORTH ANTHONY BOULEVARD** by and between FETTERS CONSTRUCTION
14 INC. and the City of Fort Wayne, Indiana, in connection with the Board of Public Works, is
15 hereby ratified, and affirmed and approved in all respects, respectfully for:

16 furnishing all labor, material, equipment, tools, power, transportation,
17 miscellaneous equipment, etc., necessary for the complete construction of
18 Fire Station No. 10:

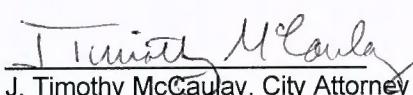
19 involving a total cost of One Million One Hundred Sixty-Three Thousand and no/100 Dollars
20 (\$1,163,000.00) And NO/100 Dollars (\$1,163,000.00).

21 SECTION 2. Prior Approval has been requested from Common Council on
22 APRIL 22, 1997. Two copies of said Contract are on file with the Office of the City Clerk and
23 made available for public inspection, according to law.

24 SECTION 3. That this Ordinance shall be in full force and effect from and after
25 its passage and any and all necessary approval by the Mayor.

26 
27 Council Member
28

29 APPROVED AS TO FORM
30 AND LEGALITY

31 
32 J. Timothy McCaulay, City Attorney
33

Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum

AIA Document A101 - *Electronic Format*

AGREEMENT

made as of the Twenty-Sixth day of March in the year of
Nineteen Hundred and Ninety-Seven

BETWEEN the Owner:

(Name and address)

The City of Fort Wayne
One Main Street
Fort Wayne, Indiana 46

and the Contractor:

(Name and address)

Fetters Construction Inc.
P.O. Box 111
14425 State Road 1
Leo, Indiana 46765

The Project is:

The project is:
(Name and location)

Name and location
A New Fire Station Number 10
3122 North Anthony Boulevard
Fort Wayne, Indiana

The Architect is:

THE DIRECTOR IS
(Name and address)

(Name and address)
Martin, Riley & Mock, Inc.

Martin, Riley & Mock, Inc.
d/b/a Martin Riley Mock architects/consultants

221 West Baker Street

Commission No. E96142

The Owner and Contractor agree as set forth below:

THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES; CONSULTATION WITH AN ATTORNEY IS ENCOURAGED WITH RESPECT TO ITS COMPLETION OR MODIFICATION. AUTHENTICATION OF THIS ELECTRONICALLY DRAFTED AIA DOCUMENT MAY BE MADE BY USING AIA DOCUMENT D401.

The 1987 Edition of AIA Document A201, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified. This document has been approved and endorsed by The Associated General Contractors of America.

Copyright 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1967, 1974, 1977, copyright 1987 by the American Institute of Architects, 1735 New York Avenue, N.W., Washington, D.C. 20006-5292. Reproduction of the material herein or substantial quotation of its provisions without written permission of the AIA violates the copyright laws of the United States and will be subject to legal prosecution.

ARTICLE 1 **THE CONTRACT DOCUMENTS**

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement; these form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 9.

ARTICLE 2 **THE WORK OF THIS CONTRACT**

The Contractor shall execute the entire Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others, or as follows:

Base Work only; no Alternates included.

ARTICLE 3 **DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**

3.1 The date of commencement is the date from which the Contract Time of Paragraph 3.2 is measured, and shall be the date of this Agreement, as first written above, unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

(Insert the date of commencement, if it differs from the date of this Agreement, or, if applicable, state that the date will be fixed in a notice to proceed.)

Unless the date of commencement is established by a notice to proceed issued by the Owner, the Contractor shall notify the Owner in writing not less than five days before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

3.2 The Contractor shall achieve Substantial Completion of the entire Work not later than

(Insert the calendar date or number of calendar days after the date of commencement. Also insert any requirements for earlier Substantial Completion of certain portions of the Work, if not stated elsewhere in the Contract Documents.)

210 Calendar Days from the date of Commencement

, subject to adjustments of this Contract Time as provided in the Contract Documents.

(Insert provisions, if any, for liquidated damages relating to failure to complete on time.)

ARTICLE 4 **CONTRACT SUM**

4.1 The Owner shall pay the Contractor in current funds for the Contractor's performance of the Contract the Contract Sum of One Million, One Hundred Sixty-Three Thousand Dollars (\$1,163,000.00), subject to additions and deductions as provided in the Contract Documents.

4.2 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If decisions on other alternates are to be made by the Owner subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date until which that amount is valid.)

Base Work only; no Alternates included.

4.3 Unit prices, if any, are as follows:

N/A

ARTICLE 5 **PROGRESS PAYMENTS**

5.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

5.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

5.3 Provided an Application for Payment is received by the Architect not later than the last day of a month, the Owner shall make payment to the Contractor not later than the last day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than thirty (30) days after the Architect receives the Application for Payment.

5.4 Each Application for Payment shall be based upon the Schedule of Values submitted by the Contractor in accordance with the Contract Documents. The Schedule of Values shall allocate the entire Contract Sum among the various portions of the Work and be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

5.5 Applications for Payment shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

5.6 Subject to the provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

5.6.1. Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the total Contract Sum allocated to that portion of the Work in the Schedule of Values, less retainage of ten percent (10%). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute may be included as provided in Subparagraph 7.3.7 of the General Conditions even though the Contract Sum has not yet been adjusted by Change Order;

5.6.2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of ten percent (10%);

5.6.3 Subtract the aggregate of previous payments made by the Owner; and

5.6.4 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Paragraph 9.5 of the General Conditions.

5.7 The progress payment amount determined in accordance with Paragraph 5.6 shall be further modified under the following circumstances:

5.7.1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to One Hundred percent (100%) of the Contract Sum, less such amounts as the Architect shall determine for incomplete Work and unsettled claims; and

5.7.2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Subparagraph 9.10.3 of the General Conditions.

5.8 Reduction or limitation of retainage, if any, shall be as follows:

(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Subparagraphs 5.6.1 and 5.6.2 above, and this is not explained elsewhere in the Contract Documents, insert here provisions for such reduction or limitation.)

ARTICLE 6 **FINAL PAYMENT**

Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when (1) the Contract has been fully performed by the Contractor except for the Contractor's responsibility to correct nonconforming Work as provided in Subparagraph 12.2.2 of the General Conditions and to satisfy other requirements, if any, which necessarily survive final payment; and (2) a final Certificate for Payment has been issued by the Architect; such final payment shall be made by the Owner not more than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

ARTICLE 7 **MISCELLANEOUS PROVISIONS**

7.1 Where reference is made in this Agreement to a provision of the General Conditions or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

7.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.
(Insert rate of interest agreed upon, if any.)

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Contractor's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)

7.3 Other provisions:

Please refer to the Project Manual document entitled "Supplementary General Conditions," Article 9, for additional provisions relating to progress payments and the escrow agreement.

ARTICLE 8 **TERMINATION OR SUSPENSION**

8.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of the General Conditions.

8.2 The Work may be suspended by the Owner as provided in Article 14 of the General Conditions.

ARTICLE 9 **ENUMERATION OF CONTRACT DOCUMENTS**

9.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:

9.1.1 The Agreement is this executed Standard Form of Agreement Between Owner and Contractor, AIA Document A101, 1987 Edition.

9.1.2 The General Conditions are the General Conditions of the Contract for Construction, AIA Document A201, 1987 Edition.

9.1.3 The Supplementary and other Conditions of the Contract are those contained in the Project Manual dated 2/97, and are as follows:

Document **Title** **Pages** See Project Manual

GC General Conditions of the Contract for Construction (AIA Document A201 - 1987 Edition.)

SGC Supplemental General Conditions

9.1.4 The Specifications are those contained in the Project Manual dated as in Subparagraph 9.1.3, and are as follows:
(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

Section
Division **Title** **Pages** See Project Manual

Division 1 General Requirements

Division 2 Sitework

Division 3 Concrete

Division 4 Masonry

Division 5 Metals

Division 6 Wood and Plastics

Division 7 Thermal and Moisture Protection

Division 8 Doors and Windows

Division 9 Finishes

Division 10 Specialties

Division 11 Equipment

Division 12 Furnishings

Division 15 Mechanical

Division 16 Electrical

9.1.5 The Drawings are as follows, and are dated 14 February 1997 unless a different date is shown below:
(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

Number **Title** **Date**

T001 Title Sheet

L101 Landscaping Plan

C001 Site Survey

C101 Site Development Plan
C102 Site Utility Plan
C103 Site Details

A101 First Floor Plan
A102 Second Floor Plan
A103 Enlarged First Floor Plan

A201 Elevations

A301 Building Sections
A302 Wall Sections
A303 Sections and Details

A401 Door and Window Schedules and Details
A402 Door and Window Details

S101 Foundation Plan
S102 First and Second Floor Framing Plans

M100 Mechanical Ventilation Classification Sheet
M101 Mechanical Key Plan
M102 Enlarged First Floor Mechanical Plan

M201 Mechanical Details
M202 Mechanical Details
M203 Mechanical Schedules

P101 Plumbing Plan (Sanitary)
P102 Plumbing Plan (Water Distribution)

P201 Plumbing Details and Schedules

E101 Lighting Plans
E102 Power and Signal Plans
E103 Details
E104 Schedules

9.1.6 The addenda, if any, are as follows:

Number	Date	Pages
Addendum One	3 March 1997	ADD1-1 thru ADD1-6
Addendum Two	6 March 1997	ADD2-1 thru ADD2-6 plus attachments
Addendum Three	6 March 1997	ADD3-1 thru ADD3-6
Addendum Four	7 March 1997	ADD4-1 plus attached Subsurface Investigation Report
Addendum Five	8 March 1997	ADD5-1

Portions of addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 9.

9.1.7 Other documents, if any, forming part of the Contract Documents are as follows:

(List here any additional documents which are intended to form part of the Contract Documents. The General Conditions provide that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part

of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)

This Agreement is entered into as of the day and year first written above and is executed in at least three original copies of which one is to be delivered to the Contractor, one to the Architect for use in the administration of the Contract, and the remainder to the Owner.

OWNER The City of Fort Wayne

CONTRACTOR Fetters Construction Inc.

(Signature)

(Signature) Steven A. Fetters, President

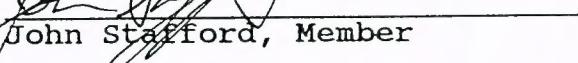
(Printed name and title)

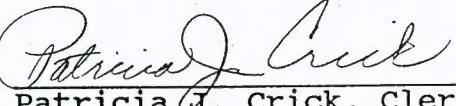
(Printed name and title)

BOARD OF PUBLIC WORKS


Linda Buskirk, Chairman


C. James Owen, Member


John Stafford, Member

ATTEST 
Patricia J. Crick, Clerk

E.B.E. RIDER

THIS AGREEMENT made and entered into by and between the CITY OF FORT WAYNE, hereinafter referred to as "Owner", and FETTERS CONSTRUCTION INC hereinafter referred to as "Contractor",

WITNESSETH:

WHEREAS, Contractor is the apparent low bidder on construction project commonly referred to as the FIRE STATION NO. 10 which project was bid under Contract FD-10; and

WHEREAS, Contractor agrees that the goal for qualified Emerging Business Enterprises, hereinafter sometimes referred to as E.B.E.'s" as subcontractors on this project is 10 % of the contract amount; and

WHEREAS, Owner has, pursuant to Executive Order 90-01 (as amended 12/19/91), adopted a goal of at least 10% of the contract amount to Emerging Business Enterprises as defined under said Executive Order; and

WHEREAS, said Executive Order states:

"Section 2. Paragraph C. Each contractor shall be required to make a good faith effort to subcontract 10% of the contract amount to Emerging Business Enterprises on each construction contract he/she is awarded. In the event a contractor is unable to subcontract 10% of the contract amount or secure the services of an Emerging Business Enterprise, he/she will be required to submit a completed Request for Waiver form on which he/she will provide a written description of the efforts taken to comply with the participation goals."

NOW, THEREFORE, in consideration of the foregoing and of the mutual agreements hereinafter contained, the sufficiency of which consideration is hereby acknowledged, the parties hereto agree as follows:

1. Conditional Award: Subject to approval by the Common Council of the City of Fort Wayne as stipulated in the construction contract to which this Rider is attached, Owner awards the construction contract to the Contractor.
2. E.B.E. Remittance Requirements: If the contractor is in compliance with the provisions of the construction contract to which this Rider is attached, the Owner will make payments for such work performed and completed. However, in any such case, the Owner will retain ten percent (10%) of the total amount owing to insure satisfactory completion of the contract and to insure contractor's compliance with this E.B.E. Rider. Upon final inspection and acceptance of the work, and determination by the Fort Wayne Board of Public Works that the contractor has made a good faith effort to subcontract 10 % of the contract amount to emerging business enterprises, the contractor will be paid in full.

In the event there is a determination that good faith compliance with this E.B.E. Rider has not occurred, appropriate reduction in the final payment pursuant to paragraph 6 of this E.B.E. Rider will be made.

If the contract is in excess of \$100,000, the contract will be subject to the standard Board of Public Works escrow agreement. However, payments to the CONTRACTOR are not to exceed 90% of the total contract amount until the OWNER has verified that the CONTRACTOR has made good faith efforts to attain the E.B.E. goal stipulated in this E.B.E. Rider. Payment of the final 10% of the total contract amount will be dependent upon good faith efforts to comply with this E.B.E. Rider, and subject to reduction in the event of non-compliance as provided in paragraph 6 of this E.B.E. Rider.

3. Request for Waiver: If at the time final payment application is made, contractor has not attained the 10 % E.B.E. goal, contractor shall file with the final payment application a "Request for Waiver". Said Request for Waiver shall contain a written description of the efforts taken by Contractor to attain 10 % E.B.E. goal.

4. Determination of Waiver Requests: The Contract Compliance Department of the City of Fort Wayne shall examine all Requests for Waiver to determine if Contractor's efforts constitute good faith efforts to attain such goal and shall submit recommendations concerning said Requests for Waiver for the final determination of the Board of Public Works of the City of Fort Wayne.

APR-07-97 MON 16:33

FW CITY CONTROLLER

FAX NO. 2194271404

P. 03

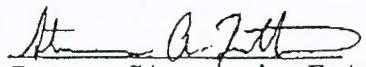
5. Good Faith Per Se: In any case, a Contractor shall be deemed to have made good faith efforts at compliance where E.B.E.'s have been subcontracted for every sub-contract for which there are qualified E.B.E.'s available.

6. Consequence of Non-Compliance: In the event the Board of Public Works approves a recommendation that contractor failed to make good faith efforts at compliance, the contract shall be reduced by the amount calculated as the difference between 10 % and the percentage level met. Said amount shall be added to the City of Fort Wayne E.B.E. Bond Guarantee Fund and contractor agrees to accept the reduced amounts as full payment under the terms of his/her contract.

7. Waiver Approved: In the event the Board of Public Works determines that a good faith effort to comply with this E.B.E. Rider has been made, the contract shall not be reduced, and the balance owing to the contractor shall be paid in full.

IN WITNESS WHEREOF, the parties have executed this E.B.E. Rider this 6th day of April 1997

By: FETTERS CONSTRUCTION, INC.



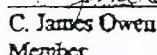
Contractor Steven A. Fetters, Pres.

By:

Board of Public Works

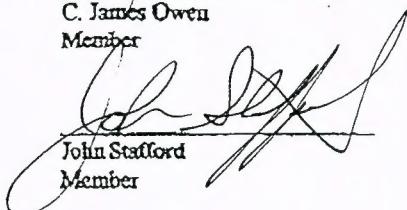


Linda Buskirk
Chairman



C. James Owen

Member



John Stafford

Member

ATTEST:



Patricia J. Crick
Secretary and Clerk

DIGEST STREET

TITLE OF ORDINANCE: Construction of the new Fire Station 10 at 3122 North Anthony Boulevard

DEPARTMENT REQUESTING ORDINANCE: Board of Public Works

SYNOPSIS OF ORDINANCE: For the furnishing of all labor, material, equipment, tools, power, transportation, miscellaneous equipment, etc., necessary for the complete Construction of New Fire Station No. 10. PRIOR APPROVAL IS BEING REQUESTED.

EFFECT OF PASSAGE: Construction of new Fire Station Number 10

EFFECT OF NON-PASSAGE: Fire Station #10 will not be constructed.

MONEY INVOLVED (DIRECT COSTS, EXPENDITURE, SAVINGS) \$1,163,000.00.
(BUILDING CORP. LEASE)

ASSIGNED TO COMMITTEE (PRESIDENT): _____

Read the first time in full and on motion by Crawford, and duly adopted, read the second time by title and referred to the Committee on Finance, (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Common Council Conference Room 128, City-County Building, Fort Wayne, Indiana, on _____, the _____ day of _____, 19_____, at _____ o'clock _____ M., E.S.T.

DATED: 4-22-97

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by Crawford, and duly adopted, placed on its passage. PASSED LOST by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT
TOTAL VOTES	<u>9</u>			
BENDER	<u>✓</u>			
CRAWFORD	<u>✓</u>			
EDMONDS	<u>✓</u>			
HALL	<u>✓</u>			
HAYHURST	<u>✓</u>			
HENRY	<u>✓</u>			
LUNSEY	<u>✓</u>			
RAVINE	<u>✓</u>			
SCHMIDT	<u>✓</u>			

DATED: 5-13-97

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (ANNEXATION) (APPROPRIATION) (GENERAL) (SPECIAL) (ZONING) ORDINANCE RESOLUTION NO. S-39-97

on the 13th day of May, 19 97

Sandra E. Kennedy ATTEST: Thomas P. Henry
SANDRA E. KENNEDY, CITY CLERK SEAL PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 14th day of May, 19 97, at the hour of 11:00, o'clock A.M., M., E.S.T.

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this 15th day of May, 19 97, at the hour of 1:00, o'clock P.M., E.S.T.

P. Helmke
PAUL HELMKE, MAYOR

BILL NO. S-97-04-09

REPORT OF THE COMMITTEE ON FINANCE

JOHN N. CRAWFORD - DONALD J. SCHMIDT - CO-CHAIR
ALL COUNCIL MEMBERS

WE, YOUR COMMITTEE ON FINANCE TO WHOM
WAS REFERRED AN (ORDINANCE) (RESOLUTION) approving Contract
CONSTRUCTION OF NEW FIRE STATION #10 AT 3122 NORTH ANTHONY BOULEVARD
between FETTERS CONSTRUCTION INC. and the City of Fort Wayne, Indiana,
in connection with the Board of Public Works

HAVE HAD SAID (ORDINANCE) (RESOLUTION) UNDER CONSIDERATION
AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID
(ORDINANCE) (RESOLUTION)

DO PASS / DO NOT PASS ABSTAIN NO REC

W. H. A. L. S.

1000

DATED: 5-13-97

Sandra E. Kennedy
City Clerk